

CHAPTER 5

BOARD OF ADJUSTMENT

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11-5-101 Creation.

A Board of Adjustment is hereby created pursuant to Section 10-9-6 of the Utah Code Annotated, 1953, as amended.

11-5-102 Board Members.

(1) The Board of Adjustment shall consist of five (5) members, each to be appointed by the Mayor with the advice and consent of the City Council. Each member shall serve for a term of five (5) years, with the terms beginning on the first day of July and so arranged that the term of not more than one (1) member will expire each year. Terms of each of the members shall expire on the last day of June in the last year of the term. Any member may be removed for cause by the City Council upon written charges and after public hearing, if such public hearing is requested.

(2) Vacancies on the Board occurring for reasons of death, resignation, removal, or disqualification shall be promptly filled by the City Council for the unexpired term of such member.

(3) One (1) member, but no more than one (1), of the Planning Commission shall be a member of the Board of Adjustment. The Planning Commission member appointed to the Board shall serve for one (1) calendar year and may be reappointed for additional terms.

11-5-103 Organization and Meetings.

(1) At the beginning of each year, the Board of Adjustment shall elect one of its members to act as Chairman for the year. At meetings where the Chairman is absent the Board shall elect a temporary or acting Chairman for that particular meeting.

(2) Meetings of the Board shall be held at the call of the Chairman and at such other times as the Board may determine. The Chairman, or in his/her absence, the acting Chairman, may administer oaths and compel the attendance of witnesses. All meetings of the Board shall be open to the public.

(3) The Board shall keep minutes of its proceedings showing the members present and the vote of each member upon each question. The Board shall also keep records of its examinations and other official actions. Records of the Board shall be filed in the City office and be available for public review.

(4) All decisions of the Board shall be based upon the finding of fact and every finding shall be supported in the record of the meetings of the Board. The concurring vote of three (3) members of the Board shall be necessary to decide in favor of the applicant on any matter before the Board.

(5) The Board of Adjustment may adopt rules of procedure not inconsistent with this Title and/or state law.

11-5-104 Powers and Duties of Board.

The Board of Adjustment shall have the power and duty to hear and decide:

(1) Appeals - The Board shall hear and decide appeals from any order, requirement, determination, or decision of the Zoning Administrator. Such appeals may be made by any person aggrieved, or by any officer, department, board, or bureau of the City which is affected by such order, requirement, decision, or determination. The appeal shall be made in accordance with Section 11-5-106 and the rules adopted by the Board.

(2) Nonconforming Uses - Nonconforming use determinations, other than those decided by the Zoning Administrator as provided in this chapter, and applications for the expansion of a nonconforming use shall be determined by the Board. These determinations shall be made as provided in Section 11-5-107 of this chapter, State Law, and the rules adopted by the Board.

(3) Variances - The Board shall have the power to hear and decide all applications for variance from the Zoning Ordinance except for allowing a use in a zone which is not specifically listed as a permitted or conditional use. Such decisions shall be made in accordance with Section 11-5-108 of this chapter, State Law, and the rules adopted by the Board.

11-5-105 Zoning Administrator's Determinations.

The Zoning Administrator may decide certain matters as designated by the Board, consistent with guidelines established by this chapter, State Law, and rules adopted by the Board. Pursuant to that authority, the Zoning Administrator may decide all cases which are routine in nature, uncontested, do not impact on the character of the neighborhood, or are primarily brought about as a result of recent changes in the Zoning Ordinance which create a large number of nonconforming structures or uses. The specific types of decisions the Zoning Administrator is authorized to make shall include:

(1) Variances to setback requirements in which the proposed reduction is not more than twenty-five percent (25%) of the normal required setback;

(2) Variances to parking requirements where a reduction in the number of parking spaces is not more than ten percent (10%) of the normal requirement;

(3) Determination of a nonconforming use which can be verified by substantial evidence. Substantial evidence, for the purpose of this Section, shall mean official documents such as written correspondence from a Public body or Agency, receipts, permits, tax notices, or other property information which may establish the truth of the matter asserted by the applicant;

(4) Consider additions or alterations to existing buildings or structures which are nonconforming as to yard regulations provided the addition follows the existing wall lines and does not increase the extent of the nonconformity;

(5) Consider a change in status of a nonconforming use to a less intense use than that which exists;

(6) Final review and approval of plans where the Board has required that a final plan be submitted which includes all requirements imposed by the Board as conditions of granting an approval.

11-5-106 Appeals.

Appeal may be made to the Board of Adjustment by the City or any person aggrieved by a final decision, determination, or requirement of the Zoning Administrator made under the provisions of this Title. All appeals shall be made as follows:

(1) The appeal shall be made within fifteen (15) days of the action or decision being appealed from by filing a written notice of appeal, along with a designated fee, with the Zoning Administrator and Board of Adjustment;

(2) The notice of appeal shall specify, in detail, the action and grounds upon which the applicant or other interested parties deem themselves aggrieved. A notice which fails to specify grounds for appeal may be summarily dismissed by the Board with or without prejudice;

(3) All papers constituting the record upon which the action being appealed is based shall be transmitted to the Board of Adjustment;

(4) The Board of Adjustment shall set the appeal for hearing to be held within a reasonable time from the date the appeal is received. Public Notice of the appeal hearing shall be given as required by law and according to Policies adopted by the Board. Written notice of the date set for hearing shall be mailed to the appellant at least seven (7) days prior to the hearing. An applicant may appear in person or may be represented by an attorney or other authorized agent at any meeting of the Board. Written authorization shall be required for an agent. After hearing the appeal, the Board may reverse or affirm, wholly or in part, or may modify the order, requirement, decision, or determination appealed from. An affirmative vote of three (3) members of the Board shall decide any matter under consideration;

(5) The filing of an appeal shall stay all proceedings and actions in furtherance of the matter appealed, pending a decision of the Board. Said stay shall exist unless the Zoning Administrator certifies to the Board, after the notice of appeal has been filed, that by reason of facts stated in the notice, the stay would cause imminent peril to life or property. In such a case, proceedings shall not be stayed except by restraining order granted by the District Court on application, notice, and due cause shown;

(6) The City, or any person aggrieved by any decision of the Board, may bring and maintain a plenary action for relief in any court of competent jurisdiction, provided the petition for such relief is presented to the Court within thirty (30) days after the date of the hearing at which the decision of the Board was rendered.

11-5-107 Nonconforming Use of Buildings, Structures, and Land.

(1) Determinations of Nonconforming Buildings and Uses - All matters regarding the nonconforming use of buildings and land shall be determined by the Board of Adjustment except as otherwise provided herein. Upon application, and after a public hearing on the matter, the Board shall determine if the use or building is nonconforming in respect to the provisions of this Title. The Zoning Administrator may determine routine and uncontested requests to verify nonconforming uses as provided in Section 11-5-105 of this chapter and according to rules adopted by the Board.

(2) Nonconforming Lots of Record - The requirements of this Title as to minimum lot area or lot width shall not be construed to prevent the development of any lot or parcel of land for a use allowed in the zone in which the lot or parcel is located, provided that the property has access to a public street and is a legally divided lot, held in separate ownership, at the time such requirements became effective. The Zoning Administrator shall make a determination as to the nonconformity of such lots based on documentation submitted by the lot owner. Reduction in required yards for such lots shall require variances which shall be requested and processed as outlined in this chapter.

(3) Nonconforming Use of Open Land - A nonconforming use of land lawfully existing on the effective date of this Title may be continued provided such nonconforming use shall not be expanded or extended into any other open land except as provided herein. The Board, after holding a public hearing, may allow the expansion of a nonconforming use of land provided such change is in harmony with the surrounding neighborhood and meets the intent of the Master Plan and this Title. Reasonable conditions may be attached to the approval in order to insure neighborhood compatibility. If said nonconforming use is discontinued for a continuous period of one (1) year or more, the use shall be considered to be abandoned and any future use of such land shall conform to the provisions of the zone in which it is located.

(4) Alteration of Nonconforming Buildings and Structures - Buildings and structures which are determined to be nonconforming in respect to setbacks or height may be continued. Additions or structural alterations may be made to the extent that they are required by law. In addition, the Board, after holding a public hearing, may allow an enlargement or structural alteration provided such change is in harmony with the surrounding neighborhood and meets the intent of the Master Plan and this Title. Reasonable conditions may be attached to the approval in order to insure neighborhood compatibility. If a nonconforming building or structure is removed or destroyed, every future use of the land on which the building or structure was located shall conform to the provisions of this Title.

(5) Nonconforming Use of Structures and Buildings - The nonconforming use of any structure or building lawfully existing on the effective date of this Title or amendment may be continued as provided in this Chapter. A nonconforming use may be extended to include the entire floor area of the existing structure or building in which it was conducted at the time the use became nonconforming. If said nonconforming use is discontinued for a continuous period of one year or more, the use shall be considered abandoned and any future use of such structures and buildings shall conform to the provisions of the zone in which they are located.

(6) Change in Status of a Nonconforming Use - A nonconforming use may be succeeded, upon approval by the Zoning Administrator, by a less intense and more restrictive nonconforming use of a more desirable nature. Such change must be effected within one (1) year from the first day on which the previous use is discontinued. After a change to a less intensive use occurs, the use shall not change back to a more intensive use.

(7) Reconstruction of Nonconforming Building or Structure Partially Destroyed

a. A nonconforming building or structure, other than a dwelling of two dwelling units or less, damaged or destroyed to the extent of not more than fifty percent (50%) of its reasonable replacement value at the time of its destruction by fire, explosion, other casualty, act of God, or action of a public enemy, may be restored. Occupancy or use of such building or structure which existed at the time of such partial destruction may be continued subject to the provisions of this chapter.

b. A nonconforming dwelling of two dwelling units or less which has been damaged or destroyed by fire, explosion, other casualty, act of God, or action of a public enemy, may be restored or reconstructed to the same nonconforming building or structure as existed before such damage or destruction, provided there is no increase in any nonconformity. The City must issue a building permit for such restoration or reconstruction within one (1) year of the damage or destruction, and construction shall be carried on without interruption.

(8) Amortization of Nonconforming Uses - The Board may provide for the timely modification or removal of a nonconforming use of land for open storage or signs deemed to be incompatible with the surrounding neighborhood. A reasonable period may be granted in which the nonconforming use shall be modified or removed to comply with the Master Plan and Zoning Ordinance.

11-5-108 Variances.

(1) The Board of Adjustment may authorize upon appeal, variance from the provisions of this Title where it can be shown that due to special conditions the literal enforcement of this Title would result in undue hardship to the property owner. Special conditions that warrant a variance shall apply to a specific parcel of property and include such things as exceptional narrowness, shallowness, or shape of the property; exceptional topographic conditions; or other extraordinary and exceptional situations or conditions. Hardship, as used herein, shall be distinguished from a mere inconvenience to the property owner or a desire to reduce financial costs. In granting a variance, the Board may affix any conditions it feels are necessary to carry out the intent of this Ordinance.

(2) Variance Criteria - Unless otherwise provided in this Title, the Board may grant a variance from the requirements of any provision of the Zoning Ordinance to the extent that such a grant shall be consistent with the provisions of this section. Each case shall be considered only on its individual merits; a previous variance shall not be deemed to set a precedent. Before a variance can be granted, the applicant must show that all the following criteria have been met:

- (a) The variance will not authorize a use other than those uses specifically allowed as permitted or conditional uses in the zone in which the subject property is located;
- (b) The variance will not substantially affect the intent of the Zoning Ordinance and that adherence to the strict letter of the ordinance will cause difficulties and hardships, the imposition of which upon the petitioner is unnecessary in order to carry out the general purpose of the ordinance. "Hardship" and "difficulties", as used in this section, shall mean a hardship peculiar to the property and not created by any act of the owner. In this context, personal, family, or financial difficulties, loss of prospective profits, or neighboring violations are not hardships justifying a variance;

- (c) Special circumstances apply to the property covered by the application which do not generally apply to other property in the same zoning district;
- (d) That because of special circumstances attached to the property, the owner is deprived of privileges possessed by other property owners in the same zoning district and the granting of the variance is essential to the enjoyment of a substantial property right possessed by other property in the same district.

Chapter 5 Amended and Combined (Chap 5 and 37), 2/6/91, Ord. 91-8
11-5-107(7) enacted by Ord. 2005-03, 01/19/05